

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,)	
)	No. 55854-4-I
Respondent,)	
)	DIVISION ONE
v.)	
)	
HARJINDER SINGH GANDHAM,)	UNPUBLISHED OPINION
)	
Appellant.)	FILED: September 18, 2006

DWYER, J. -- Harjinder Gandham and the State agreed to defer prosecution of certain felony and misdemeanor charges pending against him. After revoking the agreement, the trial court found Gandham guilty based on stipulated evidence. On appeal, Gandham argues that the deferred prosecution agreement signed by the parties and approved by the superior court was entered without statutory authority and should therefore be vacated. But the agreement deferring prosecution was only part of a package negotiated by the parties. Gandham's agreement to plead guilty to certain other crimes was also an integral part of the deal. Because the deferred prosecution agreement cannot be challenged separate and apart from the balance of the plea agreement, Gandham cannot receive the relief he seeks. Accordingly, we affirm.

FACTS

Gandham was prohibited by court order from having contact with his former girlfriend, M.A. Despite the protective order, Gandham forcibly took

M.A.'s purse from her on February 1, 2004. Thereafter, Gandham was charged with the crimes of robbery in the second degree and two misdemeanor violations of a no-contact order in Whatcom County Superior Court cause No. 04-1-00113-0. The charges in this cause all arose from the February 1 incident. After Gandham punched M.A. in the stomach on February 21, 2004, the State also charged him with felony violation of a no-contact order under Whatcom County Superior Court cause No. 04-1-00443-1. Negotiations between the State and Gandham ensued.

On May 20, 2004, Gandham pleaded guilty to two counts of assault in the third degree under Whatcom County Superior Court cause No. 04-1-00113-0, as charged in a first amended information. These charges arose from Gandham's assaultive behavior on both February 1 and 21. Pursuant to these amendments, the State also charged Gandham with a misdemeanor violation of a no-contact order and a felony violation of a no-contact order arising from the same two incidents. These charges were alleged in Whatcom County Superior Court cause No. 04-1-00443-1. On the same day as Gandham pleaded guilty in cause No. 04-1-00113-0, he entered into an "Agreed Deferral of Prosecution" in cause No. 04-1-00443-1. Under the terms of the "Agreed Deferral of Prosecution," Gandham agreed to avoid being charged with or convicted of any criminal offenses for three years.¹ He also agreed that, should his "Agreed Deferral of

¹ The State agreed to dismiss the charges if Gandham complied with his obligations under the agreement.

Prosecution” be revoked, he waived his right to a jury trial and stipulated to the admissibility of certain evidence presented by the State. After a subsequent hearing, Gandham’s “Agreed Deferral of Prosecution” was revoked in October 2004.

At the ensuing bench trial, Gandham initially sought to set aside both his guilty plea and the “Agreed Deferral of Prosecution.” However, Gandham eventually withdrew his motion to set aside his guilty plea, while continuing to argue that the “Agreed Deferral of Prosecution” should be invalidated. At a hearing on February 8, 2005, the trial court denied Gandham’s request to set aside or invalidate the “Agreed Deferral of Prosecution,” and sentenced him on the convictions. Gandham appeals.

DECISION

Gandham contends that the parties lacked statutory authority to enter into the “Agreed Deferral of Prosecution”. He points out that the legislature has specifically authorized deferred prosecutions only in certain limited circumstances, citing chapter 10.05 RCW² and RCW 13.40.127. Because the legislature no longer authorizes deferred prosecutions for adults charged with felonies,³ Gandham argues

² “In a court of limited jurisdiction a person charged with a misdemeanor or gross misdemeanor may petition the court to be considered for a deferred prosecution program.” RCW 10.05.010(1).

³ The legislature not only amended former RCW 9.95A.010, the felony deferred prosecution statute, to make it inapplicable to any felony offense committed on or after July 1, 1984, Laws of 1981, ch. 137, § 33, it repealed the former statute in 1985. Laws of 1985, ch. 52 § 1.

that “the deferral agreement entered here was entered without authority and must be voided.”⁴

Under Washington law, a defendant charged with certain crimes may be eligible for a pretrial diversion or deferred prosecution. The granting of a deferred prosecution is governed by statute. Abad v. Cozza, 128 Wn.2d 575, 580, 911 P.2d 376 (1996). However, under the circumstances of this case, we need not decide whether the Sentencing Reform Act of 1981 authorizes the prosecution to enter into a combined felony and misdemeanor deferred prosecution of this type in a superior court proceeding. This is because Gandham cannot challenge the validity of the “Agreed Deferral of Prosecution” agreement while leaving his guilty plea undisturbed. The two are part of an integrated whole and cannot be challenged separately.

An analogous situation was presented in State v. Turley, 149 Wn.2d 395, 69 P.3d 338 (2003). In that case, the defendant pleaded guilty to one count of first degree escape and one count of conspiracy to manufacture methamphetamine. He was sentenced to concurrent terms of confinement with no community placement. When the State later learned that the drug charge carried a mandatory 12-month term of community placement, the State moved to amend the judgment and sentence. The trial court declined to allow Turley to withdraw his plea in its entirety, concluding instead that he was entitled to withdraw only the plea to the charge that

⁴ Br. of Appellant at 6.

carried community placement. Our Supreme Court held that the trial court could not “grant or deny a motion to withdraw a plea agreement as to each count separately when the defendant pleaded guilty to multiple counts entered the same day in one agreement.” Turley, 149 Wn.2d at 398 (emphasis added). The Supreme Court explained “that the plea agreement was one bargain or, as the defendant puts it, a ‘package deal.’” 149 Wn.2d at 400. Thus, the Court “h[e]ld that a trial court must treat a plea agreement as indivisible when pleas to multiple counts or charges were made at the same time, described in one document, and accepted in a single proceeding.” Id. See also State v. Hagar, 126 Wn. App. 320, 325, ¶ 12, 105 P.3d 65 (“Given the stipulation’s integral role in the plea agreement, the stipulation and resulting sentence cannot be challenged apart from the agreement itself.”), review granted, 154 Wn.2d 1033, 119 P.3d 852 (2005).

Here, as in Turley, the parties negotiated an agreement involving multiple counts or charges. Gandham pleaded guilty to two counts of third degree assault and the State agreed to defer prosecution on the two no-contact order violations. And, while one document contained the plea agreement and another the diversion agreement, the two documents cross-referenced one another.⁵ Moreover, the trial

⁵ The “Agreed Deferral of Prosecution” contains the following provisions:

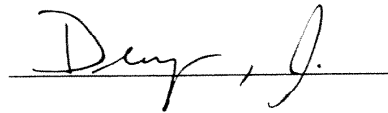
7. The right to argue that the State failed to join related offenses pursuant to CrR 4.3.1. when it filed the First Amended Information under cause numbers 04-1-00443-1 and 04-1-00113-0;
8. The right to argue that the Felony Violation of a Restraining Order charge under 04-1-00443-1 merges with the Assault in the Third Degree charge under 04-1-00113-0.

Similarly, the written plea form Gandham signed contained the following:

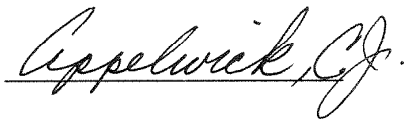
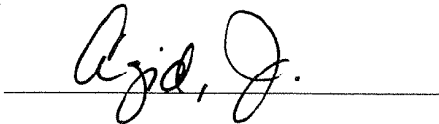
[XX] I was originally charged with the crimes of Robbery in the Second Degree, Violation of a No Contact Order, and Violation of a No Contact Order under 04-1-

court approved both at virtually the same time and place. In our judgment, this clearly demonstrates that the negotiated resolution of all charges was indivisible, and the “Agreed Deferral of Prosecution” may not be separately challenged.

Affirmed.

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WE CONCUR:

A handwritten signature in cursive script, appearing to read "Appelwick, J.", written over a horizontal line.A handwritten signature in cursive script, appearing to read "Ajda, J.", written over a horizontal line.

00113-0 and Felony Violation of a No Contact Order under 04-1-00443-1. I am pleading guilty to the lesser offenses of 2 counts of Assault in the Third Degree (negligence) and I am entering into a deferred prosecution on 04-1-00443-1 as a bargained for disposition in this matter. Pursuant to In re: Barr, 102 Wn.2d 265 (1984), and In re Hewes, 108 Wn.2d 579 (1987), I agree and understand that the court must be fully apprised of the plea agreement between the parties. I understand that the court must find a factual basis to support the original charge(s). I assert that I am receiving a benefit by pleading guilty to the charge(s) herein instead of the original charge(s). I am aware of the essential elements of and the nature of the original charge(s) as well as the charge(s) to which I am pleading. I am aware of the relevant facts which constitute the original crime(s) charged as well as the crime(s) to which I plead guilty. My decision to plead guilty is based on an informed review of all the alternatives before me. I understand the consequences of my plea bargain. I agree that the court may review the statement of probable cause supplied by the prosecution to establish a factual basis for the original charges.